



*St Edmundsbury*  
BOROUGH COUNCIL

**DEV/SE/16/72**

# **Development Control Committee**

## **6 October 2016**

### **Hazardous Substances Consent SE/01/2826/H**

### **Bury St Edmunds Holder Station, Tayfen Road, Bury**

### **St Edmunds - Revocation**

<b>Date Registered:</b>	n/a	<b>Expiry Date:</b>	n/a
<b>Case Officer:</b>	Gareth Durrant	<b>Recommendation:</b>	Revoke Hazardous Substances Consent
<b>Parish:</b>	Bury St Edmunds Town	<b>Ward:</b>	Risbygate
<b>Proposal:</b>	Revocation of Hazardous Substances Consent No. SE/01/2826/H - Continued storage of natural gas.		
<b>Site:</b>	Bury St Edmunds Holder Station, Tayfen Road, Bury St Edmunds		
<b>Applicant:</b>	n/a		

#### **Synopsis:**

Proposal to revoke a Hazardous Substances Consent under Section 14 of the Planning (Hazardous Substances) Act 1990.

#### **Recommendation:**

It is recommended that the Committee consider the proposal to revoke the hazardous substances consent.

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**Background:**

**This matter is referred to the Committee because there are no delegated powers for Officers to revoke Hazardous Substances Consents.**

**Proposal:**

1. The proposal is not a conventional application for planning permission but is seeking Committee resolution to revoke a Hazardous Substances Consent. The consent has become operationally redundant but whilst it remains technically 'live' it is holding up redevelopment of the site to which it relates and other nearby brownfield land. The proposal to revoke the consent has not been received from an external party but is being recommended by the Head of Planning and Growth in order to facilitate an unfettered implementation of development allocated by the Vision 2031 Development Plan document.

**Application Supporting Material:**

2. Given that no application has been submitted, there is no supporting material to consider.

**Site Details:**

3. The site fronts on to Tayfen Road in Bury St Edmunds. It once supported a gas holder structure which has recently been demolished to make way for re-development. The gas holder became redundant following the implementation of a gas pressure reduction system. Being part of the circular route around the town centre Tayfen Road carries a lot of traffic on a daily basis. The gas holder structure was (prior to its recent demolition) particularly prominent in the public realm and a landmark feature in this part of the town and represented the industrial heritage of the location.
4. The site is under 0.5 hectare in size. Its boundaries are marked by security fencing, with a mature tree/hedgerow belt situated along the south (Tayfen Road frontage) west and north boundaries.

**Relevant Planning History:**

5. 2015 – Notification of proposed demolition of the gas holder and anti-freeze building approved (DC/14/1859/DE1).
6. 2000 and 2001– Hazardous Substances Consent granted on three occasions for continued storage of natural gas. (SE/00/2936/H, SE/00/1683/H and SE/01/2826/H).
7. 1992 – Hazardous Substances Consent granted for storage of natural gas

in a water sealed gas holder (E/92/2781/H).

8. 1978 – Planning permission granted for replacement security fencing and gates (E/78/1208/P).
9. 1974 – Planning permission granted for erection of a portakabin (E/74/1724/P). This planning permission was renewed in 1975 (E/75/2162/P).

**Consultations:**

10. The proposed revocation of a Hazardous Substances Consent would have no impact on any party other than the landowner/operator whom benefits from the consent. No consultations have been carried out.
11. The land owner (National Grid) has been contacted for their views of the proposed revocation of the consent. At the time of writing a response was awaited.

**Representations:**

12. No external parties have been formally consulted with respect to the proposed revocation.

**Policy:**

13. The following policies of the Joint Development Management Policies Document and the St Edmundsbury Core Strategy December 2010 have been taken into account in the consideration of this matter:

14. Joint Development Management Policies Document:

- DM14 – Protecting and Enhancing Natural Resources, Minimising Pollution and Safeguarding from Hazards.

15. Bury St Edmunds Vision 2031

- BV9 – Tayfen Road – Bury St Edmunds (allocation of land for redevelopment)

16. St Edmundsbury Core Strategy December 2010

- No relevant policies

**Other Planning Policy:**

17. National Planning Policy Framework (2012) paragraphs 17, 172, 176, 186 and 187.

### **Officer Comment:**

18. Section 1 of The Planning (Hazardous Substances) Act 1990 (PHS Act) confirms the Council is the 'Hazardous Substances Authority' within its administrative boundaries. The Act conveys various powers to the Council in respect of hazardous substances including determining applications for Hazardous Substances Consent.
19. In this case, the Committee is not considering an application but instead is being asked to consider revocation of an existing Hazardous Substances Consent which no longer serves a purpose but, on technical grounds, is holding up development.
20. Section 14 of The PHS Act conveys a general power to revoke or modify Hazardous Substances Consent. It states the Authority may revoke consent if it appears to them, having regard to any material consideration, that it is expedient to revoke it. Section 15 of the Act sets out that the revocation order cannot take effect unless it is confirmed by the Secretary of State. Section 16 sets out situations in which the Hazardous Substances Authority is liable to pay compensation. Section 17 confirms a consent is automatically revoked if there is a change in the person in control of the part of the land to which the consent relates (unless a further application for continuation of the consent has been made).
21. There are no national or local planning policies which pertain to revocation of Hazardous Substances Consents, although the following advice is set out in the National Planning Policy Guidance:
  - *Redundant hazardous substances consents can be a barrier to development. Sometimes a consent is no longer required by an operator. For example, a facility may have shut down or a site redeveloped. However, unless the hazardous substances consent is revoked then consultation zones are still likely to apply. Hazardous substances authorities should be proactive about revoking consents that no are no longer required.*
22. The remainder of this section of the report examines relevant history, the material considerations behind the recommendation to revoke the Hazardous Substances Consent and the potential for compensation.

### **History**

23. The HPS Act was enacted in 1990. At that time the gas holder was already in situ at the Tayfen Road site and had been so for many years. The holder was in operational use and natural gas was being stored at the time. No planning (or other) consent authorised the structure or its use which, given the longevity of its presence, had become lawfully established. At the time of enactment of the HPS Act in 1990, the Health and Safety Executive confirmed the 'consultation distance' (safeguarding zone) was set at 30 metres from the wall of the holder.

24. In 1992, the Council (in its new role as Hazardous Substances Authority) entered the storage of natural gas at the Tayfen Road site onto the register as a deemed consent. This meant the ongoing storage became subject to standard conditions/controls set down by Regulations. The deemed consent included a plan confirming the extent of the land to which it applied.
25. In 2000, the Council received two applications for Hazardous Substances Consent for the continued storage of natural gas at the Tayfen Road site. These applications were required as the operator transferred small peripheral parts of the site to third parties (which meant the 1992 deemed consent would otherwise have lapsed). The fresh consents related to reduced site areas but did not affect the quantities of gas stored. In 2001 a further application Hazardous Substances Consent was submitted for gas storage as the site boundaries changed again. The quantities of gas permitted to be stored again remained unaffected.
26. The Hazardous Substances Consent granted in 2001 (reference SE/01/2826/H) remains extant and is the subject of this report.

### **Material considerations.**

27. Section 14 provides the Council with wide reaching powers with respect to revocation. In this case, the following matters are material to the recommended revocation of the relevant consent at the Tayfen Road site:
- The container for the storage of gas has been demolished and removed from the site. It is no longer physically possible to store natural gas on the site at quantities granted by the consent.
  - Planning permission is likely to be required for the construction of a further gas holding container.
  - The gas holder structure (recently demolished) has been replaced by a pressure reduction system which means there is no longer a need to store gas at the Tayfen Road site; the consent granted in 2001 therefore no longer serves a useful purpose.
  - The fact that the hazardous substances consent (SE/01/2828/H) remains extant means its 'consultation zones', are also extant. This means the Health and Safety Executive automatically recommends refusal to certain developments (including residential development) situated within the 'consultation zones'. Whilst the consent remains extant it remains technically possible for natural gas to be stored at the site again in future without the need for a further grant of hazardous substances consent, hence the Health and Safety Executive is resistant to sensitive development being provided within the relevant 'consultation zones'.
  - The continuing presence of the Hazardous Substances Consent is holding up implementation of policy BV9 of the Bury St Edmunds Vision

2031, which is a masterplanned mixed use redevelopment of adjacent brownfield land, including land within the consultation zones to the former gas holder.

- The recommended revocation of the Hazardous Substances Consent would enable the standardised objections of the Health and Safety Executive to be lifted.

### **Compensation (risk assessment).**

28. Section 16 of the PHS Act sets out requirements for compensation in respect of revocation orders. It states a claim has to be made and compensation could be payable (by the Council) if it is shown that any person has suffered damage in consequence of the revocation order –

(a) by depreciation in of the value of an interest to which he is entitled in the land in on minerals in, on or under it; or

(b) by being disturbed in his enjoyment of the land or of minerals in, on or under it.

29. In this case, the site operator has demolished and removed the infrastructure required to store natural gas at the site and replaced it with a pressure reduction system (which did not require Hazardous Substances Consent). Accordingly, whilst the operators presently benefit from a Hazardous Substances Consent to store natural gas at the site, they are not able to realise it without a storage vessel. It is also understood the present operators of the site intend to dispose of the land for redevelopment in due course and the demolition of the gas holder structure and subsequent remediation of the land are part of that process.

30. Officers are satisfied the proposed revocation of the relevant Hazardous Substances Consent is unlikely to depreciate the value of the site or its resources and would not affect the current owners' enjoyment of the land. Indeed, the recommended revocation of the Hazardous Substances Consent is likely to facilitate and assist the operators' intended future disposal of the site.

### **Conclusion:**

31. It is concluded that the Hazardous Substances Consent relating to the storage of natural gas at the former gas holder site in Tayfen Road is redundant and no longer serves a useful purpose for the current site operator. Indeed, it is apparent the presence of the consent is holding up otherwise acceptable development of other nearby land. It is recommended the Committee resolves to revoke the relevant hazardous substances consent.

### **Recommendation:**

It is **RECOMMENDED** that Hazardous Substances Consent no. SE/01/2826/H be revoked following confirmation from the Secretary of State.

**Documents:**

Hazardous Substance Consent file reference SE/01/2826/H – Note: This file is not available on the website given its age. The file can be viewed in advance of the meeting by prior arrangement with the Case Officer.

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